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Montana Justice Quarterly

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Summer 1986

A Publication of the Office of Attorney General

August 1986: Volume I, Number 3

Featuring:

Shaun R. Thompson
on Cooperation among Investigators and Prosecutors

Randall S. Yeager
on Nine-Millimeter Pistols

Tom Adamo
on Homicide Conspiracies

And more...

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Publisher
Mike Greely, Attorney General of Montana

Editor
Lonn Hoklin, Executive Assistant to the Attorney General

Associate Editor
Patrick Driscoll, Chief Assistant Attorney General

Contributing Editors:

For the Prosecution
Marc Racicot, Chief
County Prosecutor Services Bureau

Scientific Investigations
Ronald Rivers, MD
State Medical Examiner

Motor Vehicles
Larry Majerus, Administrator
Motor Vehicle Division

Criminal Investigations
Gary Carrell, Chief
Criminal Investigation Bureau

Fire and Arson
Bruce Houston
Acting State Fire Marshal

Traffic Enforcement
Colonel Robert Landon, Administrator
Montana Highway Patrol Division

Identification
Mike Miller, Chief
Criminal Identification Bureau

Law Enforcement Services
Fritz Behr, Administrator
Law Enforcement Services Division

The Montana Board of Crime Control
Mike Lavin, Administrator
Crime Control Division

Networking
John Mathews, Administrator
Data Processing Division, Department of Justice

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From the Editor:

AG Wants Law Enforcement's Views on Fate of Academy

In 1985, the Legislature established the Joint Subcommittee on the Law Enforcement Academy to investigate options for a permanent Academy site. Since then the subcommittee has considered dozens of proposals from communities throughout Montana, and has narrowed the list to three finalist proposals in Lewistown, Great Falls and Dillon.

Representative Robert Thoft, chairman of the subcommittee, has asked the Attorney General's office to advise the subcommittee on which proposal looks best. Before offering advice, however, Attorney General Mike Greely plans to evaluate each of the three proposals to determine whether it meets the specifications and goals that he outlined to the subcommittee last year. Those specifications and goals were part of his original proposal for a new Academy facility to be built on a site offered by Montana State University in Bozeman. The Attorney General believes that they accurately reflect the criminal justice system's training needs.

Mr. Greely plans to go a few steps further, however: he intends to consult law enforcement directly about the desirability of each finalist proposal. Later this summer, Academy Administrator William Westfall will convene the first meeting of the Joint Committee on Academy Programs and Facilities, an ad hoc organization of county sheriffs, police chiefs and other criminal justice professionals. Mr. Westfall and his staff will present detailed reports on the sites and facilities, and will ask the Joint Committee to express its will.

The Attorney General has also asked the Peace Officers Standards and Training (POST) Council to evaluate the three surviving proposals. The POST Council has members who represent a large cross section of the justice system, and their views should be helpful.

In late summer or early fall the legislative subcommittee—accompanied by people from the Attorney General's office, the state architect's office, the Academy, the POST Council and others—will tour all the sites in order to inspect them firsthand. After analyzing the information gathered on the tours, and after considering the views of the Joint Committee and the POST Council, the Attorney General will offer a recommendation to the legislative subcommittee. The subcommittee will then make its final decision, and will offer a proposal to the full Legislature in 1987.

Because the Academy is such a critical aspect of criminal justice training in Montana, the Attorney General is firm in his resolve to offer a recommendation that reflects not only the Academy's program needs, but also the wants and needs of law enforcement. He would welcome any and all views and observations from criminal justice professionals (preferably in writing) about the strengths and weaknesses of all three finalist proposals. If you want to make yourself heard on this important matter, write to Mike Greely at the following address:

Office of the Attorney General
Justice Building
215 North Sanders
Helena, Montana 59620

In this issue of **MJQ**, Officer Randall S. Yeager of the Montana Highway Patrol discusses that agency's recent comparative tests of nine-millimeter pistols, which should interest police administrators who share the Patrol's concern over the obsolescence of the traditional service revolver (**Special Report**, page 2).

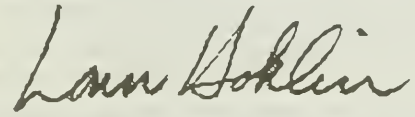
Deputy State Fire Marshal James A. Leaf presents the first of a pair of articles on juvenile fire setters, a social woe that is apparently worsening throughout the nation (**Fire and Arson**, page 4).

Jim Hutchison, Rick Morehead and Joe Stewart of the state crime laboratory illuminate the mysteries of forensic toxicology (**Scientific Investigations**, page 6).

In the spring issue, the Havre Police Department's Michael Shortell introduced a series on the investigation of homicides that are linked to conspiracies. In this issue, agent Tom Adamo of the state Criminal Investigation Bureau follows up with a detailed account of a real murder case, replete with helpful investigative advice (**Criminal Investigations**, page 10).

Ed Hall of the Montana Board of Crime Control discusses ways to minimize jail time before trial as a strategy for reducing jail costs, a matter of great concern to local policy makers in this age of fiscal crisis and law suits over "constitutional" jails (**Montana Board of Crime Control**, page 12).

And last but certainly not least, former prosecutor Shaun R. Thompson gives specific examples of cooperation between prosecuting attorneys and criminal investigators on major felonies—examples that represent key aspects in improving the likelihood of conviction (**For the Prosecution**, page 15). His observations are food for thought, not only for county attorneys and their deputies, but also for criminal investigators.



MHP Tests 9-Millimeter Pistols

Special Report

By Officer Randall S. Yeager

Recently, a trend among large law enforcement agencies has been to replace the traditional service revolver with the nine–millimeter semi–automatic pistol for uniformed duty. At least four state highway patrols or state police organizations have made the switch, as have numerous local law enforcement agencies. The Royal Canadian Mounted Police recently converted.[1] And last year came the most dramatic example of all: the United States armed forces adopted the nine–millimeter to replace the venerable service .45.[2]

Why has law enforcement started to forsake the traditional revolver in favor of the comparatively exotic semi–automatic?

To answer this question, the Montana Highway Patrol recently held a series of tests. The overall objective of the tests was to determine whether a nine–millimeter pistol is the right choice for uniformed officers. Is the semi–automatic preferable to the revolver, the Patrol wanted know, and if so, which semi–automatic best serves the Patrol's needs?

Some background is in order.

For the past fifteen years or so, the Highway Patrol and other police organizations have seen a change in the nature of violent crime, and it has not been a change for the better. Criminal violence seems to be increasingly lethal. The prospect of organized terrorism migrating from overseas to American shores has intensified concern about the safety of citizens and the law enforcement officers who protect them.

When the Montana Highway Patrol began issuing its present duty revolver in 1967, the Patrol leadership believed that the weapon offered adequate protection for the officers. Since that time, however, Montana has experienced many changes. The state's population has increased substantially in several communities. Some areas have become havens for extremist political groups. The interstate transportation into Montana of illegal drugs, stolen vehicles and other illicit goods has increased alarmingly. And the hardened criminal element has shown an appreciation and taste for fully automatic weapons—deadly machine guns and machine pistols, in other words. In short, the Patrol believes that retaining its present service revolver represents a shortfall in officer protection that did not exist twenty years ago.

That revolver is the Smith and Wesson Model 28, which is a .357 magnum with a four–inch barrel. It holds six rounds of .357 magnum or .38 special ammunition. The officer carries an additional twelve rounds in two speed loaders on his or her duty belt, bringing the total ammunition complement to eighteen rounds.

In deciding which nine–millimeters to test, the Patrol set two standards. First, the pistol to be tested must be *double–action*, which means that it can be cocked and fired merely by pulling the trigger. Second, it must have a magazine capacity of at least thirteen rounds. Of the pistols received for testing, only three met the eligibility standards—the Beretta Model 92[3], the Sig Sauer P–226[4] and the Smith and Wesson Model 459.

The Beretta and the Sig Sauer have magazine capacities of fifteen rounds, while the Smith and Wesson's magazine holds fourteen rounds. Thus, with fully loaded weapons and two full magazines on the duty belt, an officer has a 46–round system with either the Beretta or the Sig Sauer, and a 43–round system with the Smith and Wesson.

The additional ammunition available to an officer armed with a semi–automatic pistol is an advantage in any shooting situation. The Patrol officers who tested the three pistols commented favorably on the extra ammunition capacity, in contrast to that of the old revolver.

Before actually testing the weapons, the participating officers questioned whether the nine–millimeter ammunition would be as effective as the present revolver ammunition. The .38 special ammunition now in use by the Patrol is a factory–loaded 125–grain hollow point. The proposed nine–millimeter ammunition is a factory–loaded 115–grain hollow point. While the present .38 special round has a ten–grain weight advantage, the nine–millimeter round has the greater velocity, which led the test group to conclude that the rounds were of roughly equal effectiveness.

The test consisted of two groups of Highway Patrol officers who fired and evaluated the pistols. The first group included four officers of the headquarters staff in Helena. These officers fired 100 rounds or more through each pistol, utilizing a modified Highway Patrol pistol qualification course.[5] The course provides for 50 rounds to be fired from seven positions at distances of 7–25 yards.

The first group used all types of jacketed bullets—hollow point, soft point and full metal jackets—to determine whether any particular combination of pistol and ammunition is prone to malfunction.

The second group of shooters was a cross section of Patrol officers from all over Montana. They had varying shooting abilities and all sizes of hands. They each fired 50 rounds or more through every pistol at targets located 25 yards from the firing positions. Then each fired an addtitional 50 rounds through his favorite pistol of the three.

Both groups' evaluations incorporated eight separate tests. The purpose of the first four tests was twofold: to familiarize every officer with each pistol before firing; and to evaluate the pistols on such traits as ease of maintenance, construction, loading and unloading.

"...[T]he hardened criminal element has shown an appreciation and taste for fully automatic weapons—deadly machine guns and machine pistols, in other words."

Special Report

(continued)

The second series of four tests was the actual shooting, during which the officers recorded their findings on accuracy, reliability, ease of operation and shooting comfort. Both sets of tests used 1–10 rating scales, with the highest numerical rating representing the least favorable finding. Only the raw scores went into the test results. The scorekeepers added up the ratings for each pistol and divided the total points by the number of shooters, producing an average score for comparison *(Figure 1)*.

The testing officers also supplied written comments, which generally confirmed the results of the numerical scores. The Sig Sauer received largely positive remarks. The Beretta produced good impressions. The overall acceptance of the Smith and Wesson was marginal. Of the fifteen shooters, fourteen stated that they would prefer the semi–automatic pistol to the Patrol's present revolver.

So, what has the Patrol learned from these tests? First, the officer in the field needs an improved weapon. The semi–automatic pistols provide improved ammunition capacity, ease of reloading, better handling, a neat and trim appearance, better sights, less recoil and superior reliability. With respect to the all–important reliability, the Sig–Sauer and the Beretta each fired nearly a thousand rounds during the testing without malfuction, a feat that the Patrol's present service revolver cannot match. The only maintenance that any of the tested weapons received during the testing process was a few drops of oil per every several hundred rounds.

As stated earlier, the Patrol adopted its present Smith and Wesson Model 28 revolver in 1967. During the past two decades, many thousands of rounds have passed through these weapons. This year, Smith and Wesson ended production of the Model 28, meaning that even though parts will be available for some time yet, the Patrol must adopt a new sidearm in the foreseeable future. That new sidearm could very well be a nine–millimeter semi–automatic.

	Sig Sauer P226	Beretta Model 92	Smith&Wesson M-459
Raw Total Score	368	520	1,200
Average Score	24.5	34.6	80

Note: A low score indicates a better rating than a high score.

Figure 1: Test Results

Officer Yeager serves with the Montana Highway Patrol Division, Department of Justice.

REFERENCES

[1]Jan Libourel, "P–226: Sig–Sauer Superb Service Auto," *Guns and Ammo,* (May 1985), pp. 48–52, 69.

[2]Libourel, "Beretta 925B–F," *Guns and Ammo,* (August 1985), pp. 38–41, 96–98.

[3]Libourel, "PP-226...," *Guns and Ammo.*

[4]Libourel, "Beretta...," *Guns and Ammo.*

[5]*Montana Highway Patrol Regulations, Policies, and Procedures Manual,* p. D–3.

Fire and Arson

Juvenile Fire Setters

by James A. Leaf

Does Montana have a problem with juvenile fire setters? The answer is an emphatic *yes!* Fires set by children are a serious matter. Like other fires they are damaging and life–threatening.

Common sense suggests that children must be made to understand the consequences of their actions, particularly as they relate to fire. Problem children should receive the professional help they need to stop setting fires. Most fire investigators, however, lack the expertise to provide effective counseling to juvenile fire setters.

In recent years, the fire service has become increasingly aware of juveniles' involvement in fire–setting incidents. According to statistics involving arrests and fire incidents, juvenile fire setters are responsible for an enormous share of all arson fires. The Federal Bureau of Investigation says that juveniles between the ages of 13 and 19 account for 43 percent of all individuals arrested for arson offenses. This statistic, alarming though it is, excludes those juveniles who actually set fires but are arrested for offenses other than arson, like vandalism or malicious mischief. It also excludes those who are diverted from the criminal justice system toward some other type of remedial program. The FBI reports that many juvenile fire setters are not arrested because of their age, or because they are clearly disturbed psychologically. For these children, there are remedies more appropriate than those offered by the criminal justice system.

The reason for an apparent increase in juvenile fire–setting nationwide is difficult to pinpoint. Some believe that the phenomenon reflects a growth in family problems. A common element in children–set fires is the need to strike back at someone or something—a parent, maybe, or an institution. The child–arsonist holds that someone or something responsible for a personal hardship, an emotional loss, or a punishment inflicted. The intense feelings that the youthful fire setter endures are often similar to those felt by the adult arsonist. Setting fires becomes a weapon, a means of getting even with a parent, a teacher, or with the whole school.

Useful information about the motives behind juvenile fire–setting is somewhat scarce, because investigators are often more interested in the motives of adult offenders. Adults, after all, can be charged criminally, unlike most juveniles. Authorities often direct juvenile fire setters to nonpunitive programs for treatment or counseling, meaning that police and fire investigators are less likely to dig for information about juvenile fire setters' motives. Investigators generally reserve their efforts and energies for criminal matters.

Recent mental health research reveals that most juvenile fire setters are either (1) those who are unaware of the consequences of their actions, or (2) those who fully understand those consequences. The latter type sets fires because he wants to inflict damage, injury or even death.

Distinguishing between these two types is a means of identifying the right treatment and other remedial options. The first category includes children who are driven by curiosity and a need to experiment. Among these are children who are too young to appreciate the danger of fire. Also in this category are those juveniles who are victims of mental retardation and psychiatric disorders.

The second category includes those youths who share the motivations of adult arsonists—revenge, spite, jealousy, a need to vandalize or engage in malicious mischief. They may set fires to conceal other crimes, or they may do it for profit. They may do it to intimidate.

Fire prevention programs have focused to some extent on the first category, recognizing that juvenile curiosity—though benign—can still be a destructive force when it motivates experimentation with fire. Some prevention programs emphasize education of very young children, employing tools like coloring book exercizes that show the dangers of fire. A more controversial technique is to encourage young children to strike matches for a prolonged period while under adult supervision, thereby exhausting whatever curiosity they may have felt about fire.

But what about children who have emotional or psychological disturbances that prompt fire–setting?

These days, most psychologists and psychiatrists avoid the term *pyromaniac*. They say it is archaic, more a catchall term to describe people who set fires for no apparent reason other than sensual gratification. The term is a product of the influence of Sigmund Freud, who viewed fire–setting as a means of releasing sexual tension and frustration.

Today's mental health professionals believe that fire–setting by emotionally and mentally disturbed people defies reduction to a single cause. Perhaps the one distinct theme that is discernable in today's mental health literature is this: fire–setting by juveniles results from intense personal distress over a significant emotional loss, or severe anxiety over impending loss. The source of distress may be the prolonged absence of a parent or other loved one. It may be a severe setback in school. It may be failure to advance or achieve on the same level as one's peers.

The number of juveniles who *repeatedly* set fires, say mental health researchers, is comparatively small. Yet, the

mental health professions devote a disproportionately large emphasis to this problem, which is apparent in the volume of professional writing on the subject. This is because mental health professionals view those children whose antisocial behavior includes fire–setting as the most emotionally disturbed of all patients. One must conclude, then, that seriously disturbed juveniles who set fires present a disproportionately dangerous threat to their communities, their families and themselves.

The Aetna Company's *Arson Prevention Series* notes that the youthful fire setter, as he grows older, often shifts his target from the home setting to a more distant location, such as the school. Also, fire–setting by juveniles usually accompanies several other delinquent behavior traits, says Aetna, like chronic lying and cruelty to animals. Youthful fire setters often come from one–parent families in which the remaining parent is distant, absent or weak.

"A common element in children–set fires is the need to strike back at someone or something—a parent, maybe, or an institution."

Fire service people who work in programs aimed at juvenile fire setters say that their case loads confirm Aetna's observations. Two readily identifiable factors show up repeatedly in the backgrounds of these children: absent fathers (more often than absent mothers); and learning disabilities, often reflected in below–average reading skills that hold the child back in school, isolating him from his peer group.

In designing programs to prevent arson by juveniles, or to treat the juvenile fire setter, authorities should pay special attention to the motives of children who set fires. Prominent among those motives is vandalism. Though fire service authorities lack solid statistics that show the percentage of children–set fires in which vandalism is the motive, most authorities believe that the percentage is very high. Schools and vacant buildings are likely targets. School security officials estimate that 50–75 percent of all school fires are juvenile arsons.

Many jurisdictions have started community involvement programs that call on citizens to watch for trespassers on properties that would be likely targets of arsonists. Boarding up and locking buildings and facilities that are likely targets have also proved effective.

The juvenile arsonist, like his adult counterpart, may set fires to achieve revenge, possibly because of some failure in his life that subjects him to severe stress. Like the adult arsonist, he lacks the ability to deal with that stress. Or, as one study suggests, the revenge motive may be directed against adults whom the child sees as "depriving" or "rejecting."

Some juvenile arsonists set fires to conceal other crimes like burglary, homicide and drug–dealing. In some jurisdictions investigators have noticed apparently random outbreaks of neighborhood fires that cannot be attributed to economic stress or any of the other common factors that contribute to adult arson. Rather, these fires may be the work of juvenile arsonists who also happen to be novice burglars. They set fires to destroy the clues that could link them to the burglaries. Criminal investigators are finding that teaming up with arson investigators can be effective in solving burglaries and drug crimes that perpetrators have tried to obscure with arson.

In Seattle, Boston and other cities, fire investigators report that adult criminals are hiring juveniles as "torches," ostensibly to burn buildings to defraud insurance companies or to perpetrate extortion. The fees for this sordid work can be as little as $50, or even a six–pack of beer. Juveniles are in demand as torches not only because of the low fees they command, but also because they usually lack prior arrest records and are unknown to police and fire departments.

Youth gangs who sell "protection" often set fires to warn or punish those who resist their attempts at extortion. Other gangs commit arson to protect their "turf."

The fire investigator must remember that in order to prove the crime of arson, he or she must fulfill the following three requirements, in order: (1) Establish that a burning occurred; (2) establish that it happened by design, rather than by accident; and (3) establish that the accused person is responsible for the act. In the legal context, the crime of arson never occurs unless investigators and prosecutors meet all three of these requirements. Thus, a child–set fire motivated by curiosity is not arson. A child's curiosity is not criminal intent, certainly.

With respect to juvenile arson and other set fires, a jurisdiction is asking for trouble if—because of scarce resources or any other reason—it fails to make a *cause and origin determination* for every fire that occurs in that jurisdiction. Equally important is keeping accurate and complete written reports on every fire. Good investigations and effective programs against juvenile fire–setting rely on such data. Arson investigators must look for trends, patterns and similarities in methods of operation. Community programs must identify problem areas and resources in order to succeed. In short, a jurisdiction hamstrings itself and wears blinders if it fails to maintain reliable data on fires.

The arson investigator who identifies a juvenile suspect should be aware of the special provisions of the Montana Youth Court Act (section 41–5–303, MCA), and should work closely with the county attorney's office to ensure protection of the youth's civil rights under that Act. An investigative determination that the youth deliberately set a fire places the matter within the juvenile justice system, which often means involvement by agencies that provide welfare and mental health services.

Mr. Leaf is a Deputy State Fire Marshal.

Scientific Investigations

Forensic Toxicology:
the Search for Poisons, Drugs and Truth

by Jim Hutchison,
Rick Morehead,
and Joe Stewart

"While toxicology admits of being extensively applied to other medical sciences, it is in medical jurisprudence that its power and extent are most evident."

Sir Robert Clayton
A Treatise on Poisons
1829

Simply stated, toxicology is the science of poisons. It is a science that concentrates on the chemical and physical properties of toxic substances. The 16th–century physician, Paracelsus, suggested that: "All substances are poisons; there is none which is not a poison. The right dose differentiates a poison from a remedy."[1]

In this age, toxicology includes a diverse range of interests, including evaluation of the risks associated with food additives, pesticides and cosmetics. It includes studies of occupational poisonings, environmental pollution, the effects of radiation, and chemical and biological warfare. Even so, the *forensic* toxicologist has held the title *toxicologist* longer than all others who study and work in the field of toxicology.

The term *forensic toxicology* implies that the science has a legal purpose. The American Board of Forensic Toxicology defines it as "the study and practice of the application of toxicology to the purposes of the law." This does not mean that forensic toxicologists consider themselves glorified legal assistants; rather, they do their work in the interest of truth and accuracy, justice and impartiality, for the public good. Every forensic toxicologist knows when he begins an investigation that his report may be introduced as evidence in a court of law, and that he may be asked to substantiate any opinions he may have formed.

Today's society finds drugs indispensable. Drugs are the physician's primary weapon in the fight against illness, and many of them are widely available for self–medication. Drugs occur in a plethora of consumer products—food, cosmetics and even soft drinks—because consumers generally assume that drugs enhance the quality of life.

In its initial stages, drug therapy relied on fairly large doses of naturally occurring compounds like opium alkaloids. As time went on, scientists developed totally synthetic drugs and synthetic modifications of natural substances. Because the synthetics produce greater efficacy (meaning that they are essentially more potent than naturally occurring compounds), physicians can administer them in smaller doses. Unfortunately, this higher efficacy usually means that synthetics have a higher potential for toxic effects if misused or abused *(Table 1)*.

The Toxicology Section of the Montana State Crime Laboratory has operated for eleven years and has analyzed about 24,000 samples in more than 6,000 cases. These have been mainly coroners' cases that involve routine drug screens and quantitations of biological fluids and tissues. The Section has analyzed a broad spectrum of other types of specimens, looking for drugs or toxic chemicals; these specimens include foodstuffs, over–the–counter (OTC) and prescription medications, veterinary samples and a multitude of other substances.

Recent advances in technology have greatly increased the capabilities of the Toxicology Section. Only a few years ago, the most common *cri de coeur* in the Section was: "If only sensitivity could be improved! If only I had a method to detect this drug! If only conjugated metabolites and polar compounds could be assayed!" If only...! If only...!

Well, all these *if only*'s have come to pass with the laboratory's acquisition of a mass selective detector (together with an internal 40,000–compound NBS library); gas

chromatographs with nitrogen phosporous detectors; and other sophisticated equipment. Modern analytical techniques are producing a higher caliber of data, thanks to marvelously improved sensitivity, specificity and quantitative accuracy.

Ten years ago, toxicologists could detect and quantitate microgram quantities (parts per million) of drugs in body fluids. Today, detection is a thousandfold better. Toxicologists can find drugs in quantities of parts per *billion*, making it possible to detect more compounds in smaller amounts.

Quite often during the course of death investigations, the toxicologist finds more than one drug or its telltale metabolites (the products that result from the body's metabolic work on a drug) in body fluids and tissues. The concentrations may be therapeutic or subtherapeutic. In such cases, the toxicologist, pathologist and coroner confront a perplexing question: "What caused the death?"

The Toxicology Section recently analyzed samples taken from a 23–year–old man who had suffered severe chronic back pain and had died suddenly. At the time of his death he was under treatement with the prescription medications Percodan (oxycodone), Valium (diazepam), and Elavil (amitriptyline). Because all three prescription bottles were present at the death scene, and all were empty, his relatives did not discount the possibility of suicide. No one was certain, however, how many

(next page)

Summary of Classification Placing Drugs Into Categories Related to their Toxicities[2]

Toxicity Rating	Commonly Used Terms	Probable Human Lethal Dose 70 kg (150–lb man)	Example
6	Super Toxic	<5mg/kg; a taste; <7 drops	Neurotoxins: e.g., snake venoms, plant toxins
5	Extremely Toxic	5–50mg/kg; a taste; 1 tsp	Strychnine, Cyanide
4	Very Toxic	50–500mg/kg; 1 tsp–1 oz	Most prescription drugs and drugs of abuse
3	Moderately Toxic	0.5–5g/kg; 1 oz–1 pt or lb	Ethyl alcohol
2	Slightly Toxic	5–15g/kg; 1 pt–1 qt	—
1	Practically Nontoxic	>15g/kg; >1 qt	—

Data from Hodges and Sterner, 1949; Gleason et al, 1969

Table 1

tablets were in each bottle before the final episode.

Postmortem examination did not reveal any obvious cause of death. Routine initial screening of the blood—using gas chromatography with dual nitrogen phosphorous detectors (NDP)—revealed the presence of at least eight separate compounds. Identification and confirmation was performed, using a gas a chromatograph interfaced to a mass selective detector (GC/MSD). Quantitation was performed, using linear regression analysis for each compound. See *Table 2* for the resulting concentrations.

After consulting with the pathologist in charge of the case, together with the county coroner and the State Medical Examiner, the Toxicology Section reached the following conclusions:

—The amounts of each quantitated drug were either therapeutic or subtherapeutic.

—Even in combination, with a small concentration of alcohol, the possibility of additive or synergistic effects were minute.

In other words, the drugs did not cause the death.

But the question remained: What *did* cause the death?

The answer, according to the analysis up to that point: *Undetermined.*

After further investigation over a two–week period, however, investigators discovered that the decedent had obtained a prescription for Placidyl (ethchlorvynol), a very potent hypnotic sedative, on the day before his demise. The Toxicology Section initiated special tests to determine whether the drug was present in the young man's body. The analytical results were positive for high toxic levels of this substance *(Table 3).*

The possibility of additive or synergistic effects suddenly became apparent, and the cause of death became clear: *Death due to polypharmacy* (ingestion of more than one type of medication at the same time). Though this case will never appear in *Ripley's Believe Or Not* as one of the most bizarre, it did produce quite unexpected findings. It produced yet another twist among the many similar cases (polypharmaceutic) that the Section has seen in the past, and presumably will see in the future. The case also illustrates the effectiveness of the many types of technology employed by the State Crime Laboratory in solving "suspicious" deaths.

Quantitation
Note: Levels in mg/l (milligrams per liter)

Specimen	Diazepam (Valium)	Nordiazepam	Lidocaine	Amitriptyline (Elavil)	Oxycodone (Percodan)
Blood	0.720mg/l	0.34mg/l	0.50mg/l	0.066mg/l	0.073mg/l
Urine	0.068mg/l	0.15mg/l	None Detected	None Detected	2.570mg/l
Vitreous	0.066mg/l	None Detected	None Detected	None Detected	0.230mg/l
Gastric	21.700mg/l	None Detected	None Detected	2.950mg/l	31.050mg/l
Total 100ml	Total remaining in Gastric			Total Remaining in Gastric	Total Remaining in Gastric
Gastric Collected	2.17mg			0.29mg	3.1mg

Comment: The blood alcohol concentration in this case was 0.04gm%.

Table 2

"Ten years ago, toxicologists could detect and quantitate microgram quantities (parts per million) of drugs in body fluids. Today, detection is a thousandfold better."

Ethchlorvynol Quantitation
Note: Levels in mg/l (milligrams per liter)

Specimen	Placidyl (ethchlorvynol)
Blood	29.4mg/l
Urine	3.8mg/l
Vitreous	5.4mg/l
Gastric	3,239.5mg/l

Note: 324mg total ethchlorvynol remaining in gastric

Table 3

REFERENCES

[1]Alphonse Poklis, "Forensic Toxicology in Postmortem Investigation," *Laboratory Medicine* vol. 10, no. 4 (April 1979).

[2]Louis J. Casarett and John Doull, *Toxicology: The Basic Science of Poison* (New York, McMillan Publishing Company), p. 24.

Mr. Hutchison is Chief Toxicologist at the Montana State Crime Laboratory in Missoula. Mr. Morehead is an Associate Toxicologist at the Laboratory, and Mr. Stewart is an Intern Toxicology Assistant there.

Criminal Investigations

The Investigative Challenge: Homicide Linked to Conspiracy Part Two

by Tom Adamo

Montana Criminal Investigation Bureau

In the first installment of this series Captain Michael F. Shortell (Havre Police Department) described some of the investigative procedures that led to the arrest and conviction of those responsible for the 1984 murder of an elderly man in Havre, Montana. Though the defendants were arrested within one week of the homicide, the investigation went on for several months.

The initial investigation, based on information gathered soon after the fact, led to the arrest of a prime suspect in Missoula, Montana. This suspect gave investigators information that implicated three other suspects, revealing that a conspiracy to commit homicide had occurred. Montana law says that conspiracy occurs when two or more persons agree to commit an offense and one of the conspirators commits an act in furtherance of the agreement (section 45–4–102, MCA).

In most conspiracy investigations, law enforcement authorities use one conspirator's testimony to arrest and prosecute the other conspirators. The investigating officer bears the important responsibility to corroborate, through independent investigation, the information that the cooperating suspect provides. The officer should keep in mind that the Montana Rules of Evidence provide an important exception to the Hearsay Rule, an exception that often helps the case: statements made by a conspirator, during the course and in furtherance of the conspiracy, may be admitted into evidence at the trial—Rule 801(d)(2)(E). Generally speaking, this exception to the Rule lets a person testify about statements that one or more conspirators made to him during the life of the conspiracy and in furtherance of it, even though the witness himself was not involved in the conspiracy.

During the Havre homicide investigation and the subsequent prosecution, witnesses who were not involved in the conspiracy repeated several statements that a conspirator had made to them, statements that revealed the nature and the object of the conspiracy, as well as the identities of the other conspirators. The investigation revealed that the victim's stepson had solicited help from the Missoula suspect in killing his stepfather, and that his mother and he had agreed to pay for that help. The stepson's solicitations occurred on several occasions; the Missoula suspect told his girlfriend about the plan more than once.

The first suspect to be arrested (the Missoula suspect) gave investigators a detailed statement about his involvement in the murder. He also described the actions and involvement of the victim's stepson, the victim's wife and yet another person who assisted in the killing. With this information in hand, investigators established probable cause to arrest the other three suspects. They also obtained search warrants for collecting physical evidence from the victim's house in Great Falls and from the stepson's vehicle, which the Missoula suspect and his accomplice had driven from Great Falls to Havre in order to commit the murder.

Significantly, the information supplied by the first suspect to be arrested—together with information supplied by witnesses—indicated that the murdered man's wife had direct involvement with the crime. But investigators had very little "hard" evidence to support that connection. Thus began a lengthy and involved investigative process toward establishing a conspiracy case.

The Missoula suspect said that he had received telephone calls from the stepson in Great Falls concerning arrangements for him to fly to Great Falls; then, according to the plan, he would drive to Havre, using the stepson's car. The Missoula suspect then sought and got help from another person in Missoula, and together they flew to Great Falls, using assumed names.

The stepson, who was a taxi driver in Great Falls, picked up the pair at the airport in his taxicab and dropped them at his personal car, which was parked at the taxicab office. The pair then drove to Havre in the stepson's car. Using information that the stepson had given them—the name of the motel and the room number where the intended victim was staying, information that the victim's wife had given the stepson over the telephone—they entered the motel room. They beat and strangled the victim.

The victim's wife gave the killers her wedding rings to give the crime the appearance of a robbery and homicide. The killers then returned to the victim's house in Great Falls, where the stepson waited. There, in the presence of the stepson, the killers burned some of their bloodied clothing in a fireplace. Then they flew back to Missoula, using assumed names.

The state crime laboratory and the state Criminal Identification Bureau, in analyzing evidence that investigators subsequently submitted, were able to link the Missoula suspects with the stepson's car and the victim's house. At the beginning of the investigation, however, the investigating officers acted mainly on statements given by initial witnesses and by the suspect in custody.

Investigators obtained a photographic lineup of both Missoula suspects in order to corroborate the information that the suspect in custody provided. The investigators then followed the route that the suspects had used from Missoula to Great Falls to Havre and back. They struck pay dirt immediately.

In Missoula, an airline ticket agent identified both suspects in the photographic lineup and produced the original tickets that the suspects had bought under their assumed names. The investigators procured copies of the tickets and asked the airline to keep the originals (which had come back into the airline office's possession in the normal course of business). This procedure helped to minimize the chain of evidence for which the investigating agency must be responsible.

In Great Falls investigators hit more pay dirt. A Havre Police investigator made contact with the taxicab company where the stepson worked. The dispatcher had made a log entry, showing that the stepson had received a telephone request to pick up a passenger at the airport. The call came in shortly after the flight from Missoula arrived. The stepson then called the dispatcher by radio to say that two of his "friends" would arrive shortly, and that the friends would take his privately owned car. The dispatcher later saw two men remove the stepson's car from its parking place and drive it away. Though the dispatcher could not identify the two men who took the car, his statement and his dispatch log corroborated the information that the coconspirators provided.

The Criminal Identification Bureau later identified a fingerprint that investigators had found inside the stepson's car. It belonged to one of the Missoula suspects. The print became a piece of physical evidence that corroborated the conspirators' statement.

Investigators collected ashes (that contained fibre samples) from the fireplace in the victim's Great Falls home, and took hair and fibre samples from the motel room where he died. The state crime laboratory matched the hair and fibre samples to the Missoula suspects, further corroborating the conspirators' statements with physical evidence. Note: the investigating officers could never have obtained some of this crucial evidence without the benefit of the conspirators' statements.

As stated earlier, the Missoula suspects returned to Missoula via Great Falls after committing the murder. As they had done in Missoula, they bought airline tickets under assumed names. An airline ticket agent in Great Falls picked one of their faces out of the photographic lineup, and matched the suspects to the tickets bought under the false names, further corroborating the story that one of the conspirators had told.

The investigators obtained investigative subpoenas to get access to telephone toll information about a Missoula suspect's residence and the victim's residence in Great Falls. The toll information helped to further link the victim's wife and stepson with the conspiracy. While in Havre, the victim and his wife had changed motels. The toll information showed a collect call from a bar in Havre to the victim's house in Great Falls, where the stepson was residing. After receiving this call (which ostensibly notified him of the change in motels), the stepson called the suspect in Missoula, who then flew to Great Falls. These recorded events occurred a short time before the homicide. In his call to Missoula, the stepson gave the killers the name of the Havre motel and the room number in which the victim was staying with his wife. While it is true that all this information came to investigators in the statement of one of the Missoula conspirators, the telephone toll data helped to corroborate it.

"In a conspiracy case, the *whole* can be greater than the sum of its parts."

The victim's wife reported the "robbery" and homicide, and in so doing, unwittingly pounded nails into the coffin of a conspiracy conviction. She made inconsistent statements to the investigating officers and others who became involved in the investigation. Ultimately, the investigation generated approximately 2,400 pages of investigative reports, statements and documents. Much of this information was generated as a result of statements given by one conspirator and the subsequent effort to corroborate those statements.

The victim's wife went to trial on charges of conspiracy to commit deliberate homicide and deliberate homicide by accountability. The prosecution called a drove of witnesses, some of whom gave information that—if considered separately—would appear not to relate to the murder. But many of these witnesses corroborated the conspirator's testimony by providing documentation like airline tickets, telephone toll data and taxicab logs. Using this information, the prosecution did an excellent job of painting a vivid and accurate picture of the crime and the events that preceded and followed. The jury convicted the wife of deliberate homicide by accountability in lieu of the conspiracy charge.

The essence of conspiracy is secret planning and agreement by two or more people to commit a crime. Investigators often fail to collect information that assists in constructing the overall picture of the crime, because that information may seem trivial or unrelated to the actual crime at the outset. To guard against this failure, investigators should follow a simple rule of thumb in the investigation of conspiracies: Document and consider *any* and *all* information that the investigation brings to light. Often, a certain statement or fact will seem irrelevant by itself. But when viewed within the total context of the crime, including the events that led to it and those that followed, that same statement or fact may suddenly acquire critical significance. In a conspiracy case, the *whole* can be greater than the sum of its parts. The Havre case and the resulting prosecution demonstrated the tremendous significance of a seemingly insignificant combination of facts and statements.

Montana Board of Crime Control

Pre–Trial Options to Jail

by Ed Hall

Jail space that is both adequate and constitutional is a scarce commodity. New jail construction costs, which range to more than $125 per square foot, are beyond the means of most Montana communities. The daily operating costs, which average about $60 per prisoner day in existing Montana jails, also create a hardship.

Communities can address the problem through wise use of existing jail space and wise planning of new jails. Moreover, the creative use of alternatives to the traditional jail can reduce overcrowding, prevent over–building, and minimize taxpayer costs. Reducing the size of a future jail by just one cell, for example, can save $60,000 or more in actual building costs, plus at least ten times that amount in operating costs throughout the typical 30–year life of a jail facility. The total savings would be about $660,000.

Also, alternatives to jailing offenders—in both the pre-trial and post-trial stages—offer effective and efficient ways to limit jail size and expense. These alternatives are those processes and programs that decrease the number of people in jail or shorten the time they spend in jail. Such alternatives emerge at virtually every point in the criminal justice process. Law enforcement officers and prosecutors often have options to putting people in jail. Defenders can effect options to jail. Special pre-trial services help keep people out of jail. And the judiciary has options to sending people to jail.

This article presents some alternatives to jail that communities throughout the country have implemented, partly to reduce jail expense. The underlying message is that local criminal justice systems have the means to influence, control and limit the size of jail populations.

LAW ENFORCEMENT'S ALTERNATIVES

Local law enforcement agencies dominate the pre-trial process. Thus, they are in a good position to effect alternatives to jailing people. Most of the time these agencies have some latitude in deciding whether to arrest, whether to transport an offender, whether to cite, or whether to refer an offender or suspect to a program that is outside the confines of jail. Such decisions have an enormous influence on the size of the jail population .

Law enforcement agencies have three basic types of options:

—Diversion. The most common type of diversion is "detox" for persons who are drunk when detained or arrested. Other diversion programs address the mentally ill, the developmentally disabled, and disturbed persons. These groups represent 10–20 per cent of jail populations. Yellowstone County successfully uses the Beta program as an alternative to jail for DUI arrests. Jurisdictions in Ohio and Texas divert mentally ill suspects and offenders.

—Dispute resolution programs. These programs, while fairly new, are under way in Denver, Oakland, and Chicago, among other places. They are not all alike. Some involve training law enforcement officers to resolve disputes without jailing people. Others involve setting up community services that law enforcement can employ as alternatives to jailing those who are involved in disputes. Such programs often come in handy for resolving marital disputes that do not involve physical abuse.

—Citation release alternatives. At least 45 states provide some form of citation release, and five states employ it for certain felony offenses. It works like this: Rather than transport a suspect or an offender to jail, and rather than book that person into jail, the law enforcement officers issue a notice to appear. Utah has a novel variation on the process, called "non–book release," in which detainees receive a screening at the jail by law enforcement officers, jail staff, or special personnel. Some detainees are released with a statement of charges that include the date and time of the court appearance, as well as other relevant information. Other jurisdictions use a "summons" that directs the suspect to appear in court without imposing a custodial arrest.

PROSECUTORS' ALTERNATIVES

Prosecutors have a major role in controlling the jail population. Throughout the nation, local prosecutors have employed measures to avoid sending people to jail needlessly. These measures fall into four categories:

—Screening at the front end. Prosecutors can reduce jail populations by screening new cases in order to eliminate the weak ones and identify those that allow alternatives to jailing people. Michigan uses "pre–arrest warrant screening," which requires law enforcement to obtain prosecutor approval before serving warrants. Wisconsin, Ohio, Minnesota and other states use "screening at booking," a process in which prosecutors review cases and charges during the booking process (or very shortly thereafter) in order to weed out weak cases, reduce charges where appropriate, or to clarify charges. In order to minimize

jail populations, some states impose charge–filing deadlines of 24 hours or 36 hours after booking.

—Maximizing the "experience factor." Using experienced prosecutors to review cases and bookings can minimize both the number of jailings and the time that people spend in jail. In Jersey City, New Jersey, for example, a special unit of senior prosecutors reviews all bookings. The experience factor present on this team results in high–quality decisions about whether jail is in order—decisions to release, decisions to charge, and decisions about whether cases can be prosecuted successfully. In Sacramento, California, where a similar system

"Reducing the size of a future jail by just one cell, for example, can save $60,000 or more in actual building costs, plus at least ten times that amount in operating costs throughout the typical 30–year life of a jail facility."

is in place, prosecutors eliminate or reduce charges in about half the cases that come in every month. Maximizing the experience factor in the prosecutor's office can have a dramatic effect on jail populations by preventing needless booking, overcharging and other mistakes that result in unnecessary jailings and inappropriately long stays in jail, both of which waste tax money.

—Moving cases expeditiously. Reducing the length of a jail stay, especially during the period between the preliminary hearing and the trial, should be one of the prosecutor's principal motives in effecting expeditious case movement. It may even be a point on which the prosecution and the defense agree, albeit for different reasons. In addition to serving the cause of speedy justice, expeditious case movement minimizes taxpayer expense, which is probably more a concern of the prosecution than the defense. Consolidating cases whenever possible, or bringing multiple charges when appropriate, contribute to expeditious case movement. "Vertical processing" is yet another prosecutorial means of moving things along, whereby the same prosecutor or team of prosecutors handles a case from start to finish. Milwaukee County, Wisconsin, after employing the method, found that criminal cases generated fewer continuances and other procedural delays.

—Using diversion programs. Deferred prosecution and other diversion programs can minimize jail populations.

DEFENDER PROGRAMS

Defender programs can play a large role in minimizing local jail populations, but they require early contact between defenders and defendants in order to do so. Like prosecutors, defenders must operate within the context of the entire local criminal justice system. Policy makers who strive to reduce jail costs should also strive for reduced defender case loads and swift identification of those cases that will require defender appointment. Judges, police and prosecutors must all cooperate toward that end, knowing that an efficient defender program will contribute to reducing jail costs.

SPECIAL PRE-TRIAL SERVICE PROGRAMS

Many jurisdictions have established formal programs to provide alternatives to jail for pre–trial detainees. A typical example: The jail operation includes a screening program, appropriately staffed and scheduled according to the pattern of jail bookings. The "pre-trial service staff" has authority to release minor offenders after screening. The screening identifies inebriates, mentally ill people and other detainees who need special care, and the pre–trial service staff directs such people to the proper local programs.

Needless to say, pre–trial services programs are not all alike. In rural Kentucky, pre–trial service staffs are on call 24 hours a day; their jurisdictions often include more than one county (a setup that may have applicability in rural Montana). In King County, Washington, the staff has authority not only to release many minor offenders, but also to release certain kinds of felons. Screening units also identify inebriates, the mentally ill and other special needs cases for diversion to special programs. In some jurisdictions they arrange for the release of DUI's.

Among the other kinds of pre–trial service alternatives are the following:

—Release on own recognizance (ROR). The ROR programs screen cases in order to find those that qualify for release on a promise to appear. Most of these programs screen detainees who are unable to post bail. Many programs use formal "risk screening" procedures to determine whether a detainee should be released. In jurisdictions that use ROR programs, authorities have found that ROR defendants have about the same failure–to–appear rate as all others.

—Supervised release. Many pre-trial service programs provide supervision of persons who have been released from jail pending trial. Some of these include "home detention," which requires the detainee to remain at home while awaiting trial; the pre-trail service staff randomly telephones or visits to ensure the person's presence. The controversial use of electronic devices to monitor a detainee's location is a form of supervised release.

—Follow–up programs. Pre-trial service programs can reduce jail populations by improving the review of cases. Wisconsin uses a private, non-profit agency to review all cases held over 72 hours. The agency then makes recommendations to the court about continued detention or release of the detainee.

(next page)

JUDGES' ALTERNATIVES

Courts hold the key to minimizing jail populations and reducing jail costs. At every level of the criminal justice system their policies and procedures govern the flow of detainees into and out of jails. The options available to courts are generally of two types:

—Scheduling and calendaring reforms. Setting bail promptly is a major step toward minimizing the local jail population. Many jurisdictions have found that the investment in a 24–hour court system is actually a cost–saving measure, for this reason alone. The new, well planned jail in Fort Benton, Montana, inludes a courtroom adjacent to the security area, which greatly speeds processing. Calendaring cases for swift processing reduces costly "dead time" in jails. A backlog of cases is deleterious not only to judges, but also to jail staffs, because a backlog often results in dangerous overcrowding.

—Delegating release authority. Authorities in King County, Washington, have found that delegating release authority to nonjudicial officials (within strict guidelines) has greatly reduced local jail populations. The King County program has three levels of delegated release authority: (1) direct release by pre-trial service agencies for certain kinds of cases; (2) release after telephone contact between a pre–trial service agency and a court; or (3) by written recommendation by a pre–trial service agency to a court for release. In another jurisdiction, the courts have empowered the jail administrator to "close" the jail to new admissions for misdemeanors.

JAIL OPERATIONS ALTERNATIVES

A jail administrator must operate the jail in a way that meets constitutional guidelines. An old or overcrowded facility makes that job very difficult. Thus, jail administrators have a keen interest in alternatives to incarceration.

Jail administrators around the country have found that one of the best ways to eliminate needless incarceration is to foster access by detainees to courts, defenders and pre–trial services. Fostering access can be as simple as providing a telephone on which the detainee can arrange for bail and other assistance. Installing a collect–call–only phone is certainly cheaper than adding a $60,000–jail cell.

The term "access" also pertains to the jail administrator and the courts. The administrator should strive to perfect that access, especially if he seeks some form of direct–release authority as a means of minimizing the jail population. In some jurisdictions, the jail administrator's access is the process through which he provides important information to the judge—the jail population numbers, for example. Knowing whether the jail is crowded can help a judge consider the public's greater interests in deciding questions about bail, sentencing and detention.

In Campbell County, Kentucky, "jail counselors" monitor detention cases and provide liaison between inmates and the jailor. As employees of the court who are stationed in the jail, the jail counselors help in the process of classifying inmates, thereby increasing the probability of release for those who are entitled to it. They ensure that cases progress through the system by safeguarding against bureaucratic oversight and delay. They help handle inmate grievances. In some other jurisdictions they assist in setting bail, and they arrange for bail review and reduction.

BAIL, THE TRADITIONAL ALTERNATIVE

Traditionally, bail has been the primary means of obtaining a pre-trial release from jail. Yet, a 1978 survey in of 66,000 pre–trial jail inmates showed that while 81 per cent had been offered bail, 46 per cent could not post it. Those who could not post bail, of course, remained incarcerated. Thanks to bail-reform efforts and the work of the Vera Institute on bail projects, several varieties of financial bail are now possible. These include fully secured bail; privately secured bail (usually a bondsman signs a promissory note and charges 10 per cent); percentage bail (the accused posts a percentage of bail with the court); and unsecured bail (the accused posts no money but forfeits the entire bail amount, should he fail to appear). Indications are that the percentage bail system assails the institution of the private, for–profit bail bondsman. In addition, research shows that failure–to–appear rates are low under the percentage bail system, generally about 15 per cent. Only four per cent of the defendants willfully abscond or must be returned by force.

"Using experienced prosecutors to review cases and bookings can minimize both the number of jailings and the time that people spend in jail."

Mr. Hall serves on the staff of Montana Board of Crime Control in Helena.

For the Prosecution

The Prosecutor and The Investigating Officer: *Working Together on the Major Case*

by Shaun R. Thompson

A former prosecutor tells how cooperation improves the chances of getting convictions—

The essence of trial preparation is taking measures to reduce the odds of losing. In major cases, a prosecutor can improve the chances of getting a conviction by working closely with the chief investigating officer assigned to the case. While this may seem fundamental, many cases are lost because of poor communication and cooperation between the prosecutor and the investigating officer.

Close cooperation starts at the top. It is imperative that the county attorney and the heads of the various law enforcement agencies (the sheriff and the police chief, for example) generate an atmosphere of trust and respect among their offices. If the county attorney and the sheriff treat each other like rivals, their attitudes are bound to filter down to the deputies in both offices.

In every major case, it is important that a chief investigating officer and a trial prosecutor be assigned to the case *at the outset*. In major cases, the county attorney and the sheriff often feel the temptation to take over the conduct of the case personally. After the initial excitement has worn off, however, the agency heads often assign the case to deputies. Consequently, the newly assigned prosecuting attorney or investigating officer must start from scratch in acquainting himself with the case and getting a "feel" for the situation.

Preparing a complex case for trial takes months. Proper preparation is possible only if the prosecutor and the chief investigating officer work closely together from the very moment the crime is discovered until the verdict is in. In a homicide case, both the investigating officer and the prosecutor who ultimately tries the case should visit the crime scene as soon as possible after discovery of the body.

The prosecutor and the investigating officer should communicate every week as the case is investigated and prepared for trial. After the investigator has initially interviewed a potential witness, the prosecutor should interview the witness again with the investigator present. Both the prosecutor and the investigator should talk to every possible witness—even potential witnesses who will probably not appear at the trial.

Whenever practicable, charges should not be filed until the case is essentially ready for trial. Once charges are filed, the state will face time constraints in developing the evidence. These constraints can prove fatal in a case for which the direct evidence is weak and the state has yet to find pertinent physical evidence, such as a murder weapon.

In sex crimes, both the prosecutor and the investigating officer must gain the trust of the victim—particularly when the victim is a young child. A child may feel comfortable talking to a friendly police officer in the familiar surroundings of the child's own home, but he or she may be hesitant to talk about the crime under questioning by a prosecutor in a courtroom. Many prosecutors take the child to the courtroom before the trial starts, to acquaint him or her with the surroundings. Lincoln County Undersheriff Neil Bauer and I would, on occasion, go even further: we would *both* take the child out for ice cream, or to a playground to play basketball or some other game, in order to cultivate a relationship of trust. Preventing a surprise at trial may require that the prosecutor and the investigator meet with the victim numerous times before the trial gets under way.

The prosecutor and the investigating officer should also work together to develop the physical and forensic evidence. In 1978–79, Highway Patrol Officer Perry Brown and I worked closely together on a negligent homicide case. The case involved a one-car accident in which the passenger in the vehicle died almost instantly. The defendant had amnesia and could not recall the accident. Since there were no other eyewitnesses, we relied heavily on physical and forensic evidence. The vehicle had been owned by the decedent, and we even had to prove that the defendant was the driver.

Officer Brown and I worked many months, putting the pieces of the case together. By reconstructing the accident, and by using medical evidence, physical evidence and a videotape of the accident scene, we proved not only that the defendant had been driving when the accident occurred, but also that he had a blood-alcohol concentration of .16 percent. We also proved that he had been driving faster than 90 milers per hour. Working as a team to put the physical and forensic evidence together, we obtained a conviction.[1]

Even in cases for which the prosecution has an abundance of eyewitness testimony, teamwork is still important in developing the physical and forensic evidence. In 1980,

Lincoln County Sheriff's Detective Rod DeBoer and I investigated and prepared a deliberate homicide case for trial. We had six eyewitnesses who would testify that the defendant shot the victim. All the witnesses, however, were close family members or friends of the victim. The defendant claimed that the victim and her family had been the aggressors, and the defense pointed out bullet holes in the defendant's vehicle.

Miles from the scene of the homicide, however, we found spent cartridges and small pieces of glass. We used forensic evidence to show that the defendant had actually shot holes in his own vehicle *after* the homicide occurred, in attempt to support a claim of self-defense. Working together, we obtained a conviction for deliberate homicide.[2]

As stated earlier, the prosecutor and the investigating officer should work together right up until the verdict. I have often found it useful to have the officer seated at the counsel table with me during the trial. Most courts will allow the presence of the investigating officer, even though he may be a witness.[3] In my view, his presence is not only useful; he has *earned* the right to sit at the counsel table.

"If the county attorney and the sheriff treat each other like rivals, their attitudes are bound to filter down to the deputies in both offices."

To summarize, close cooperation and teamwork between the prosecutor and the investigating officer provide the following benefits:

—The prosecutor will be better prepared for trial, because he will have been closely involved in the investigation.

—The investigating officer will be helpful to the prosecutor in developing evidence for presentation to the jury.

—The investigating officer will appreciate the prosecutor's willingness to spend time "in the trenches," and will probably be motivated to work even harder.

—The investigating officer will be less likely to take umbrage if the case must be dismissed, or if the charges must be reduced, because he will be in a position to see the case's weaknesses from the prosecutor's point of view.

—An investigating officer who has worked closely with a prosecutor is less likely to question that prosecutor's judgment in handling other cases.

—The prosecutor learns to appreciate the enormous effort involved in the proper investigation of a major criminal case; he also learns investigative techniques from the officer, which undoubtedly prove helpful in subsequent cases.

REFERENCES

[1]*State v. Duncan*, Lincoln County District Court Cause No. 1475.

[2]*State v. Cartwright*, 200 Mont. 91, 650 P.2d 758 (1982).

[3]Rule 615, Montana Rules of Evidence.

Mr. Thompson is the former deputy County Attorney of Lincoln County. He now practices law in Helena.

Next Issue:

Fire and Arson

More on juvenile fire setters from the State Fire Marshal Bureau.

Motor Vehicles

Long-awaited advice from the Registrar's Bureau, Montana Motor Vehicle Division, on disposing of junked and unclaimed vehicles.

And more!

ComCenter

Communications for Emergency Services: Mutual Aid Frequencies

MHP Communications Bureau Chief tells about the benefits of High Band

Montana is changing its radio communications system from low band to high band. One important aspect of this change is a new statewide channel distribution.

The old low–band system had one main channel, 39.82mhz, for statewide use by all agencies. It also had several other regional frequencies for intra-agency use.

The new statewide high–band system is founded on the concept of three frequencies for every county sheriff's office, and one or two frequencies for each local police department. These frequencies are all different, meaning that law enforcement agencies need not worry about sharing frequencies with neighboring jurisdictions. Each jurisdiction will in effect occupy its own radio world, one free of "skip" and interference from other agencies. This will be a major improvement over the old low–band system.

In planning the statewide high–band system, state government reached the conclusion that jurisdictions needed a capability to communicate with each other on some common channels. Thus, the new system features three statewide Mutual Aid channels:

—The National Police Emergency Frequency is 155.475mhz. Its purpose is to provide emergency law enforcement communications among mobile units when regular radio facilities are not adequate. Situations sometimes arise in which mobile units of different jurisdictions must communicate with each other by radio, but the nature of the emergency renders normal systems useless. This channel will provide the communications capability required to resolve crisis situations through mobile–to–mobile radio communications. In order to preserve the emergency nature of the channel, installation of equipment that utilizes this channel must be restricted to public safety vehicles.

—The State Mutual Aid Channel is 153.905mhz. This channel, designed to provide communications among many different radio users during emergencies, is for mobile use only. Snow plows, sanding trucks, school buses, ambulances, fire trucks and other emergency vehicles may use this frequency.

—The County Mutual Aid Channel is 155.790mhz. This is a common channel on which county agencies can talk to each other. It is also a common channel for routine dispatch messages and communications among mobile units.

All mobile units of state agencies are equipped with radio gear that allows use of at least one of the Mutual Aid channels described above. These agencies include the Montana Highway Patrol Division; the Fish, Wildlife and Parks Department; the Gross Vehicle Weight Division; the Department of Livestock; and the Public Service Commission. As soon as the Department of Highways completes its switch to high band across the state, it will equip all its trucks with the State Mutual Aid Channel.

"Each jurisdiction will in effect occupy its own radio world, one free of 'skip' and interference from other agencies."

The advent of the new *frequency synthesized multi–channel radio* means that local law enforcement agencies—both county and city—can add all three Mutual Aid Channels to their mobile units. They can also add two channels that are available for base station use in their dispatch.

The Department of Justice envisions a future statewide radio network that uses both the 155.475–mhz and the 155.790–mhz channels. Such a network would maintain full radio communications for mobile units as they move across the state. Many cities and counties have taken the initial steps toward such a system by switching to high band. Others must put off the switch until the needed money becomes available.

Because radio communications is so vital to law enforcement in a geographically vast, sparsely populated state like Montana, local agencies should give high priority to switching to high band. Just as important, they should ensure that the conversion includes the capability of using the Mutual Aid Channels.

DUTCH MEYER, Chief
Communications Bureau
Montana Highway Patrol Division
Helena, Montana

I would like to express my support for the continued publication of the **Montana Justice Quarterly.** As a part–time county attorney in a very sparsely populated county, and without any deputy, I am heavily dependent upon information provided to me from the experts.

Without the assistance provided by the County Prosecutor Services Bureau, the County Attorneys Association, prosecutors and deputy prosecutors from larger counties, and without the information provided by magazines such as MJQ, it would be virtually impossible for me to fulfill the duties of my position.

The **Quarterly** provides me with information that I would not otherwise receive. By all means, it should be continued.

RICHARD A. OPP
Wheatland County Attorney
Harlowton, Montana

Montana Justice Quarterly
Office of the Attorney General
Montana Department of Justice
215 North Sanders
Helena, Montana 59620

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